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BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Modification of Probation of:

RANDALL THOMAS
5319 Honda Avenue, Apt. D
Atascadero, CA 93422

OAH No. 2010070854

Psychiatric Technician License No.
PT 34530


Petitioner.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the
Board of Vocational Nursing and Psychiatric Technicians as the final Decision in the above-entitled
matter.

This Decision shall become effective on November 12, 2010.

IT IS SO ORDERED this 13th day of October, 2010.



John P. Vertido, L.V.N.
President

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.) the Board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines", (Rev. 6/19/07), which are hereby incorporated by reference. Deviation from these guidelines, including the standard conditions of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.

4. Although California Code of Regulations, title 16, section 2579.10 permits deviation from the recommended conditions of probation where appropriate, petitioner did not establish that it would be appropriate in this case to delete the probationary provisions that require him to attend support group meetings and submit to biological fluid testing. Business and Professions Code section 4501.1 provides:

Protection of the public shall be the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

5. Petitioner should be commended for his sobriety and the control he has taken over his life. But he was convicted of three alcohol-related crimes between 1999 and 2004. (Finding 2.) His sobriety date – July 2008 – was only two years ago. Although petitioner's commitment to remaining sober appeared sincere, during the term of his probation, to ensure that the public is protected, the Board must have adequate assurances that petitioner's efforts are successful. Even though his attendance at support group meetings may take away from time with his family, the Board's requirement that petitioner attend one meeting a month is not onerous. And even though random drug testing is costly, \$340 a year is not unreasonably burdensome. Because the two provisions that petitioner seeks to delete are the only ones that provide the Board with adequate assurances that petitioner is maintaining his sobriety, they should remain in his probation order until he has successfully completed probation. Petitioner's petition should therefore be denied.

1 BEFORE THE DIRECTOR
2 DEPARTMENT OF CONSUMER AFFAIRS
3 BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
4 STATE OF CALIFORNIA

5 In the Matter of the Statement of Issues
6 Against:

Case No. PT-2007-999

7 RANDALL KIRK THOMAS, JR.
8 5319 Honda Avenue, #D
9 Atascadero, CA 93422

Applicant for Psychiatric Technician License

Respondent.

11 DECISION

12
13 The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the
14 Director of the Department of Consumer Affairs¹ as the final Decision in the above-entitled matter.
15

16
17 This Decision shall become effective on November 26, 2008.

18 IT IS SO ORDERED this 21 day of October 2008.
19

20
21 P. J. Harris

22 PATRICIA HARRIS
23 Deputy Director, Board/Bureau Support
24 Department of Consumer Affairs
25
26
27

28 ¹Pursuant to Business and Professions Code section 101.1(b), on July 1, 2008, the director became vested with the duties, powers, purposes, responsibilities, and jurisdiction of the Board of Vocational Nursing and Psychiatric Technicians.

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 GLORIA A. BARRIOS, State Bar No. 94811
Supervising Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-2540
Facsimile: (213) 897-2804
6 E-mail: Gloria.Barrios@doj.ca.gov

7 Attorneys for Complainant

8 **BEFORE THE**
9 **BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. PT-2007-999

13 RANDALL KIRK THOMAS, JR.
5319 Honda Avenue, #D
Atascadero, CA 93422

14 **STIPULATED SETTLEMENT AND**
15 **DISCIPLINARY ORDER**

16 Respondent/Applicant.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) is the Executive
22 Officer of the Bureau of Vocational Nursing and Psychiatric Technicians. Complainant brought
23 this action solely in her official capacity and is represented in this matter by Edmund G. Brown
24 Jr., Attorney General of the State of California, by Gloria A. Barrios, Supervising Deputy
25 Attorney General.

26 2. Randall Kirk Thomas, Jr. (Respondent) is represented by Ken Murch of
27 California Association of Psychiatric Technicians, whose address is 1220 S Street, Suite 100,
28 Sacramento, CA 95811-9770.

3. On or about October 12, 2007, the Bureau of Vocational Nursing and Psychiatric Technicians (Bureau) received an application for a Psychiatric Technician License Application from Respondent. On or about October 5, 2007, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Bureau denied the application on February 26, 2008.

JURISDICTION

4. A Statement of Issues, Case No. PT-2007-999 was filed before the Bureau of Vocational Nursing and Psychiatric Technicians and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on June 13, 2008. Respondent timely filed his Notice of Defense contesting the Statement of Issues. A copy of the Statement of Issues, Case No. PT-2007-999 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with his representative, and understands the charges and allegations in Statement of Issues, Case No. PT-2007-999. Respondent has also carefully read, fully discussed with his representative, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in
3 the Statement of Issues, Case No. PT-2007-999.

4 9. Respondent agrees that his Psychiatric Technician License application is
5 subject to denial and he agrees to be bound by the Bureau of Vocational Nursing and Psychiatric
6 Technicians' imposition of discipline as set forth in the Disciplinary Order below.

7 CONTINGENCY

8 10. This stipulation shall be subject to approval by the Bureau of Vocational
9 Nursing and Psychiatric Technicians. Respondent understands and agrees that counsel for
10 Complainant and the staff of the Bureau of Vocational Nursing and Psychiatric Technicians may
11 communicate directly with the Bureau regarding this stipulation and settlement, without notice to
12 or participation by Respondent or his representative. Respondent understands and agrees that
13 counsel for imposition of discipline as set forth in the Disciplinary Order below. The parties
14 understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order,
15 including facsimile signatures thereto, shall have the same force and effect as the originals.

16 DISCIPLINARY ORDER

17 In consideration of the foregoing admissions and stipulations, the parties
18 agree that they may, without further notice or formal proceeding, issue and enter into the
19 following Disciplinary Order:

20 IT IS HEREBY ORDERED that the application of Respondent Randall
21 Kirk Thomas, Jr., for licensure as a Psychiatric Technician is hereby granted. Upon successful
22 completion of all licensing requirements, a license shall be issued to Respondent. Said license
23 shall be immediately revoked, the order of revocation stayed, and Respondent is placed on
24 probation for a period of three years subject to the following terms and conditions:

25 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws,
26 including all statutes and regulations governing the license. Respondent shall submit, in writing,
27 a full and detailed account of any and all violations of the law to the Bureau within five (5) days
28 of occurrence. To ensure compliance with this term. Respondent shall submit two (2) completed

1 fingerprint cards and the applicable fingerprint processing fees to the Bureau within thirty (30)
2 days of the effective date of the decision, unless the Bureau determines that fingerprint cards
3 were already submitted by Respondent as part of his licensure application process effective July
4 1, 1996. Respondent shall also submit a recent 2" x 2" photograph of himself within thirty (30)
5 days of the effective date of the decision.

6 2. **Compliance With Probation Program And Quarterly Report**

7 **Requirements.** Respondent shall fully comply with terms and conditions of the probation
8 established by the Bureau and shall cooperate with the representatives of the Bureau in its
9 monitoring and investigation of the Respondent's compliance with the Probation Program.

10 Respondent shall submit quarterly reports, under penalty of perjury, in a form
11 required by the Bureau. The reports shall certify and document compliance with all the
12 conditions of probation.

13 3. **Notification of Address And Telephone Number Change(s).**

14 Respondent shall notify the Bureau, in writing, within five (5) days of a change of residence or
15 mailing address, of his new address and any change in his work and/or home telephone numbers.

16 4. **Notification of Residency or Practice Outside of State.** Respondent

17 shall notify the Bureau in writing, within five (5) days, if he leaves California to reside or
18 practice in another state.

19 Respondent shall notify the Bureau, in writing, within five (5) days, upon his
20 return to California.

21 The period of probation shall not run during the time Respondent is residing or
22 practicing outside California.

23 5. **Notification to Employer(s).** When currently employed or applying for

24 employment in any capacity in any health care profession, Respondent shall notify his employer
25 of the probationary status of Respondent's license. This notification to the Respondent's current
26 health care employer shall occur no later than the effective date of the Decision. Respondent
27 shall notify any prospective health care employer of his probationary status with the Bureau prior
28 to accepting such employment. This notification shall be by providing the employer or

1 prospective employer with a copy of the Bureau's Statement of Issues and Disciplinary Decision.

2 The Health Care Profession includes, but is not limited to: Licensed Vocational
3 Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency
4 Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary
5 technical health care positions.

6 Respondent shall cause each health care employer to submit quarterly reports to
7 the Bureau. The reports shall be on a form provided by the Bureau, shall include a performance
8 evaluation and such other information as may be required by the Bureau.

9 Respondent shall notify the Bureau, in writing, within five (5) days of any change
10 in employment status. Respondent shall notify the Bureau, in writing, if he is terminated from
11 any nursing or health care related employment with a full explanation of the circumstances
12 surrounding the termination.

13 **6. Interviews/meetings With Bureau Representative(s).** Respondent,
14 during the period of probation, shall appear in person at interviews/meetings as directed by the
15 Bureau, or its designated representatives.

16 **7. Employment Requirements And Limitations.** During probation,
17 Respondent shall work in his licensed capacity in the State of California. This practice shall
18 consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

19 While on probation, Respondent shall not work for a nurses' registry or in any
20 private duty position, a temporary nurse placement agency, as a faculty member in an accredited
21 or approved school of nursing, or as an instructor in a Bureau approved continuing education
22 course except as approved, in writing, by the Bureau. Respondent shall work only on a regularly
23 assigned, identified and predetermined work site(s) and shall not work in a float capacity except
24 as approved, in writing, by the Bureau.

25 **8. Supervision Requirements.** Respondent shall obtain prior approval from
26 the Bureau, before commencing any employment, regarding the level of supervision provided to
27 Respondent while employed as a licensed vocational nurse or psychiatric technician.

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Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Bureau.

9. **Completion of Educational Course(s).** Respondent, at his own expense, shall enroll and successfully complete a course(s) substantially related to the violation(s) no later than the end of the first year of probation; or Respondent shall be suspended from practice, until he has enrolled in and has successfully completed the specified coursework.

The coursework shall be in addition to that required for license renewal. The Bureau shall notify Respondent of the course content and number of contact hours required. Within thirty (30) days of the Bureau's written notification of assigned coursework, Respondent shall submit a written plan to comply with this requirement. The Bureau shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, Respondent shall cause the instructor to furnish proof to the Bureau within thirty (30) days of course completion.

10. **Maintenance of Valid License.** Respondent shall, at all times while on probation, maintain an active current license with the Bureau, including any period during which suspension or probation is tolled.

Should Respondent's license, by operation of law or otherwise, expire, upon renewal or reinstatement Respondent's license shall be subject to any and all terms of this probation not previously satisfied.

11. **Violation of Probation.** If Respondent violates the conditions of his probation, the Bureau after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of the Respondent's license. If during the period of probation, an accusation or petition to revoke has been filed against the Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has

1 been acted upon by the Bureau. Upon successful completion of probation, the Respondent's
2 license will be fully restored.

3 12. **Chemical Dependency Support/Recovery Groups.** Within five (5) days
4 of the effective date of the Decision, Respondent shall begin attendance at a chemical
5 dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support
6 Group). Verified documentation of attendance shall be submitted by the Respondent with each
7 quarterly report. Respondent shall continue attendance in such group for the duration of
8 probation.

9 13. **Abstain from Controlled Substances.** Respondent shall completely
10 abstain from the personal use or possession of controlled substances, as defined in the California
11 Uniform Controlled Substances Act, and dangerous as defined in Section 4021 and 4022 of the
12 Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a
13 bona fide illness.

14 14. **Abstain from Use of Alcohol.** Respondent shall completely abstain from
15 the use of alcoholic beverages during the period of probation.

16 15. **Submit Biological Fluid Samples.** Respondent shall immediately submit
17 to biological fluid testing, at Respondent's cost, upon request by the Bureau or its designee.
18 There will be no confidentiality in test results; positive test results will be immediately reported
19 to the Bureau and Respondent's current employer.

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ACCEPTANCE

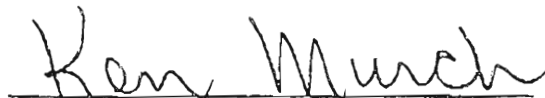
I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Psychiatric Technician License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Bureau of Vocational Nursing and Psychiatric Technicians.

DATED: 7/22/08


RANDALL KIRK THOMAS, JR.,
Respondent

I have read and fully discussed with Respondent Randall Kirk Thomas, Jr., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 7-25-08


KEN MURCH
Respondent's Representative

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Bureau of Vocational Nursing and Psychiatric Technicians.

DATED: 8/6/08

EDMUND G. BROWN JR., Attorney General
of the State of California

KAREN B. CHAPPELLE
Supervising Deputy Attorney General


GLORIA A. BARRIOS

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Supervising Deputy Attorney General
Attorneys for Complainant

DOJ Matter ID: LA2007601567
THOM.STIP.WPD

Exhibit A

Statement of Issues, Case No. PT-2007-999

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 GLORIA A. BARRIOS, State Bar No. 94811
Deputy Attorney General
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5 Telephone: (213) 897-2540
Facsimile: (213) 897-2804

6 Attorneys for Complainant
7

8 **BEFORE THE**
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues Against:

Case No. PT-2007-999

12 RANDALL KIRK THOMAS, JR.
5319 Honda Avenue, #D
13 Atascadero, CA 93422

14 Psychiatric Technician Application

15 Respondent/Applicant.
16

STATEMENT OF ISSUES

17
18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
Statement of Issues solely in her official capacity as the Executive Officer of the Board of
21 Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs.

22 2. On or about October 5, 2007, Randall Kirk Thomas
23 (Respondent/Applicant) signed his application for a Psychiatric Technician License. The Board
24 received Respondent/Applicant's application on October 17, 2007. After considering
25 Respondent/Applicant's application, the Board denied the application on February 26, 2008.

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JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 477 of the Code states:

As used in this division:

(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

5. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(3) Done any act which if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

6. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by

1 a board within the department pursuant to law to deny an application for a license
2 or to suspend or revoke a license or otherwise take disciplinary action against a
3 person who holds a license, upon the ground that the applicant or the licensee has
4 been convicted of a crime substantially related to the qualifications, functions, and
5 duties of the licensee in question, the record of conviction of the crime shall be
6 conclusive evidence of the fact that the conviction occurred, but only of that fact,
7 and the board may inquire into the circumstances surrounding the commission of
8 the crime in order to fix the degree of discipline or to determine if the conviction
9 is substantially related to the qualifications, functions, and duties of the licensee in
10 question.

11 As used in this section, 'license' includes 'certificate,' 'permit,'
12 'authority,' and 'registration.'

13 7. Code Section 4521 states:

14 The Board may suspend or revoke a license issued under this chapter for
15 any of the following:

16 (a) Unprofessional conduct, which includes, but is not limited to, the
17 following:

18

19 (6) Be convicted of a criminal offense involving the falsification of
20 records concerning prescription, possession, or consumption of any of the
21 substances described in paragraphs (4) and (5), in which event the record of the
22 conviction is conclusive evidence of the conviction. The Board may inquire into
23 the circumstances surrounding the commission of the crime in order to fix the
24 degree of discipline.

25

26 (f) Conviction of a crime substantially related to the qualifications,
27 functions, and duties of a licensed vocational nurse, in which event the record of
28 the conviction shall be conclusive evidence of the conviction.

8. Section 4523 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo
contendere made to a charge substantially related to the qualifications, functions
and duties of a licensed vocational nurse is deemed to be a conviction within the
meaning of this article. The board may order the license suspended or revoked, or
may decline to issue a license, when the time for appeal has elapsed, or the
judgment of conviction has been affirmed on appeal or when an order granting
probation is made suspending the imposition of sentence, irrespective of a
subsequent order under the provisions of Section 1203.4 of the Penal Code
allowing such person to withdraw his plea of guilty and to enter a plea of not
guilty, or setting aside the verdict of guilty, or dismissing the accusation,
information or indictment.

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1 criminal proceeding entitled *The State of Florida v. Randall Kirk Thomas* (Super.
2 Ct. Leon County, Case No. 99CR24983). Respondent/Applicant was ordered to
3 serve 75 hours community service and his car was impounded for 10 days.

4 **SECOND CAUSE FOR DENIAL OF APPLICATION**

5 **(Committing Acts that Would Result in the Suspension
6 or revocation of a Licensee's License)**

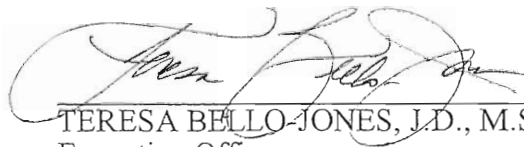
7 10. Respondent/Applicant's application is subject to denial under Code
8 section 480 subdivision (a)(3) because Respondent committed acts that would have resulted in
9 the suspension or revocation of a licensee's license, as set forth in paragraph 9 above.

10 **PRAYER**

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein
12 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric
13 Technicians issue a decision:

- 14 1. Denying Respondent/Applicant's application for a Psychiatric Technician
15 License; and
16 2. Taking such other and further action as deemed necessary and proper.

17 DATED: June 4, 2008

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22 TERESA BELLO-JONES, J.D., M.S.N., R.N.
23 Executive Officer
24 Board of Vocational Nursing and Psychiatric Technicians
25 Department of Consumer Affairs
26 State of California
27 Complainant
28

26 LA2007602127